

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6963 of 1998
to
FIRST APPEAL No. 6985 of 1998
with
CIVIL APPLICATION No. 1510 of 2000
in
FIRST APPEAL No. 6963 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL NARAYANBHAI ARJANBHAI

Appearance:

Mr. S.N Shelat, Addl. Government Pleader with
Mr. N.D Gohil, AGP for Appellant-State
Mr. M.R Shah, Advocate for Respondents

CORAM : MR.JUSTICE Y.B.BHATT
and

COMMON JUDGEMENT (Per : MR.JUSTICE Y.B.BHATT)

These are the appeals under section 54 of the Land Acquisition Act read with section 96 of the Civil Procedure Code at the instance of the Special Land Acquisition Officer challenging the common judgment and awards passed by the Reference Court under section 18 of the said Act.

2. The first and primary contention raised in the present group of appeals by the learned counsel for the appellants is on the question of limitation. It was contended that the references under section 18 were time barred and that therefore the references should have been rejected on this ground alone.

3. On examination of the judgement of the Reference Court we find that a specific issue has been raised as to limitation viz., issue no. 2 in the main reference viz., LAC No. 904 of 1990. The parties were therefore conscious as to the existence of this controversy and both parties have addressed the Reference Court on this aspect. The Reference Court has dealt with various submissions of the respective parties on this question, and ultimately decided that the references were filed within the period of limitation.

4. However, we find that the finding recorded by the Reference Court that the references were within the period of limitation is a finding not based on any evidence whatsoever, but is based merely on acceptance of the submission made by the counsel for the original claimants.

5. We find from the impugned judgement that the question of limitation as it arises under section 18 sub-section 2 of the Act has not been considered in a proper manner and that there is lack of appropriate emphasis on the case put up by the respective parties. It is contended for the appellants that the evidence indicates that the claimants were aware of the declaration of award inasmuch as they have accepted payment due under the award under section 11 of the Act, on the very next day after the award was declared. However, the Reference Court has not dealt with this aspect of the matter, possibly because this contention had not been established by appropriate evidence on

record before the Reference Court. Even otherwise, the Reference Court has only dealt with the question of service of the notice of the award under section 12 (2) in a very casual manner. It has only observed in a casual way that the claimants contended that no such notice had been served on them, whereas on the other hand, the oral evidence led by the State does not establish anything, as to whether such notices were not served or were in fact served. Thus, the relevant fact for the purpose of deciding the question of limitation would be as to whether the claimants were present or were present through their representatives on the date of declaration of the award, or whether they were served with a notice under section 12 (2) or whether the claimants achieved knowledge of declaration of the award through other means and consequently they have filed the Reference Application within the prescribed period of limitation. These relevant facts have not been established before the Reference Court by appropriate evidence.

6. Thus, the vital questions for the determination of this issue revolve around questions of fact, which have not been established on record by either side. In this situation, the observations of the Supreme Court in the case of Ram Kali Bhattacharjee vs. State of West Bengal, reported at 1995 Supp (3) SCC 314 become relevant. The Supreme Court has observed in the said decision that it is not desirable to decide the controversy as to the question of limitation, where there is paucity of evidence, and there is no factual foundation for deciding the issue. The Supreme Court, therefore, thought it appropriate to remand the matter to the Reference Court to determine the relevant questions of fact by recording further evidence on that aspect.

7. As a result of this clear position in law and from what we find from the discussion in the impugned judgment, we consider it necessary to record a finding that this Court would be unable to decide the question of limitation in absence of appropriate evidence on record.

7.1 Consequently, it is necessary and we therefore direct that the matters are remanded back to the Reference Court for recording additional evidence on all facts relevant to the question of limitation, in respect of which both the sides shall be at liberty to lead appropriate evidence.

7.2 The Reference Court shall deal with the matters as expeditiously as possible and preferably before 30th

June, 2001.

8. In the premises aforesaid, the impugned judgment and awards of the Reference Court are quashed and set-aside. These appeals filed by the State are, therefore, allowed with no order as to costs.

9. In view of our findings and directions recorded in the present judgment, no specific orders are necessary on the above Civil Application filed for tendering additional evidence in the present appeals. This application is accordingly disposed of with no order as to costs.

10. The Registry is directed to transmit the record and proceedings back to the Reference Court forthwith i.e. to say not later than 15th December, 2000. Direct service is permitted.

Prakash*